

Suleiman, Daniel

From: Suleiman, Daniel
Sent: Monday, December 23, 2013 3:16 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Meeting Follow-Up
Attachments: Asiana Letter to the NTSB September 09 2013.pdf; 11_07 NTSB LETTER.PDF

Dear David:

Thanks for meeting with us today. I'm writing to memorialize our mutual understanding, discussed today, that pursuant to 49 CFR 831.14, agency guidance, and past practice, Asiana will be permitted to make a submission to the NTSB 30 days after the Technical Review, along with the other participants in the investigation. Assuming the Technical Review occurs as scheduled in February 2014, this means that all submissions, including Asiana's, will be due in March 2014. Separately, under 49 CFR 845.27, Asiana has the right to make a hearing-related submission on January 18, 2014; the airline has not yet decided whether to make such a submission.

In addition, we appreciate your looking into the other issues we raised today. These include our requests: (a) for access to the audio recording of Capt. Lee Kang Kuk's interview with NTSB investigative staff; (b) that the NTSB perform an audio analysis of the CVR to determine whether the FLCH button was intentionally engaged at approximately 1,550 feet on the accident flight, as requested by Asiana on September 9, 2013; (c) that the NTSB ask Boeing to search its records for any documents relating to the lack of an auto-throttle "wake up" function when the Boeing 777 (or planes with similar auto-throttle logic) are in FLCH mode on approach, as requested by Asiana on November 7, 2013; (d) that the NTSB perform a "back feed" simulation as part of the investigation, as requested by Asiana on September 9, 2013; (e) that the NTSB obtain a copy of FAA Response Item 12 (as discussed in Captain Eugene Arnold's interview with NTSB investigative staff); and (f) that the NTSB ask Dr. Nadine Sarter to provide an analysis of how human/machine interaction in a highly automated cockpit applies to this accident.

As discussed, I am attaching copies of Asiana's September 9, 2013, and November 7, 2013, letters to the IIC, William English, which address items (b), (c), and (d) above; also as discussed, we will be in touch with any translation-related issues we uncover in connection with the hearing.

We appreciate your time today, and look forward to hearing from you soon. If you require any additional information in the meantime, please do not hesitate to contact me at [REDACTED]

Regards,
Dan

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Covington & Burling LLP
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9 Sep, 2013

Mr. William English
National Transportation Safety Board
490 L'Enfant Plaza, S.W.
Washington, D.C. 20594

Re: Accident Investigation of Asiana Flight 214

Dear Mr. English:

When the NTSB's investigation of Asiana flight 214 began, I expressed to you Asiana's commitment to looking at all available evidence, without preconception, to determine the causes and contributing factors that led to the accident. The NTSB's commitment in this regard is well-known and central to its reputation for thoroughness and excellence.

In this spirit of our mutual dedication to a complete and thorough investigation, it is necessary for me to express Asiana's concerns that certain relevant factual information has not yet been collected or addressed by the investigation teams. You and I have discussed some of these concerns over the past several weeks:

- As you know, the flight data recorder indicates that the flight level change autopilot mode ("FLCH") was activated at approximately 1,600 feet AGL. None of the three crew members appears to recall engaging the FLCH mode. We recommend that the NTSB conduct a comprehensive search of all databases available to it -- at the FAA, NASA, Boeing, and elsewhere -- for any reports of uncommanded autopilot mode changes in the Boeing 777 and similar models.¹
- Sound spectrum analysis of the cockpit voice recorder may be able to indicate whether there is an audio record of the FLCH button being engaged. To assess the possibility of an uncommanded autopilot mode change, we believe that sound spectrum analysis should be performed on the CVR, as it may indicate whether the button was pushed or, conversely, indicate that an uncommanded FLCH activation may have occurred.
- We understand that, at present, the NTSB is not planning to conduct a "back feed" simulation in which the flight data information is entered into a simulator to recreate the accident events in the most realistic way possible (full visuals, timing of movements, accelerations, etc.). As you know, back feed simulations are

¹ Our informal review identified one such report regarding an uncommanded autothrottle change on a Boeing 737-3Q8, registration G-THOF, on approach to Bournemouth Airport on September 23, 2007. See UK Air Accidents Investigation Branch, Aircraft Accident Report 3/2009.



ASIANA AIRLINES

extremely common in major aircraft investigations, and we understand that the primary reason that a back feed simulation is not planned in this case is because an engineering simulator is not available from Boeing until October. We believe that the back feed simulation should be performed before a public hearing because of its unique importance in understanding aircraft accidents.

- We understand that the investigation has not yet collected complete information concerning the staffing, training, and qualifications of the air traffic controllers that handled Asiana flight 214. As you know, there are some indications that controller workload factors are relevant to the investigation – for example, the aircraft did not receive clearance to land until unusually late in the final approach – and we believe that these areas should be explored fully.
- There is a need for additional factual information concerning the MSAW systems in place at the San Francisco airport. According to the FAA's Flight Inspection Manual, the MSAW component on the final approach course (the Approach Path Monitor) typically terminates one nautical mile from the end of the runway. Settings for each Approach Path Monitor may be adjusted, however, based on local obstructions and operational needs. The investigation has determined that the MSAW system at San Francisco did not alert in this case, apparently because the aircraft was past the point at which the MSAW/APM terminated. The investigation has not assessed (or apparently even collected) information concerning the settings in place at San Francisco for its MSAW/APM system on the day of the accident. Without this information, it is not possible for the Board or the parties to consider whether different MSAW settings may have alerted the Asiana 214 crew to the dangerous situation earlier and, for example, permitted an earlier go around.²
- We recommend that the investigation develop information about the aircraft's enhanced ground proximity warning system to ensure that the system operated as intended on flight 214. I understand that the system alerted to an excessive sink rate near the end of the flight. The investigation should therefore determine whether the system operated as designed and whether alternate design criteria – for example an earlier alert – would have offered greater safety protections.
- Finally, we understand that the systems group has not yet conducted a complete examination of the aircraft's Mode Control Panel ("MCP"). Because, as I understand it, the Boeing MCP switches operate by grounding, foreign contaminants introduced into the switches (e.g., dirt, grease, etc.) may lead to an activation of the switch. Given the possibility of an uncommanded FLCH activation, an examination of the MCP should be a priority.

² As you know, the Board has a long history related to safety recommendations concerning MSAW alerts.



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Your team has done an outstanding job of examining many aspects of this unfortunate accident, including the pilot-related factors. However, we believe that as the NTSB investigation moves forward, these issues also deserve thorough examination. It is essential that they be examined before a public hearing. We share your commitment to considering all available evidence necessary to understand what caused or contributed to the Asiana flight 214 accident, and believe that a better understanding of each of the issues identified above is necessary to a complete investigation. I stand ready to meet with you or your team members to discuss our concerns, and I look forward to continuing our strong working relationship.

If you have any question about this letter, please feel free to contact me again. Thank you.

Sincerely,



Dr. Soon Cheol Byeon
Air Safety Manager, Ph.D.
Aviation Safety Management
Asiana Airlines



ASIANA AIRLINES

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November 7, 2013

Mr. William English
National Transportation Safety Board
490 L'Enfant Plaza S.W.
Washington, D.C. 20594

Dear Mr. English:

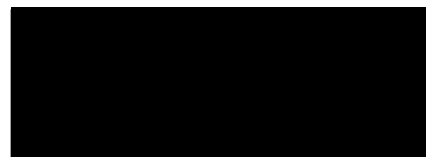
Following on my letter of earlier this week, I am writing to request that the National Transportation Safety Board ("NTSB") search for additional materials relating to the flight level change ("FLCH") autopilot mode in the Boeing 777 and its effect on the airplane's autothrottle.

The flight data recorder for Asiana Airlines Flight 214 shows that, at approximately 1,550 feet, the autopilot flight director system entered FLCH mode, and then the autopilot was quickly disengaged. A few seconds later, the autothrottle entered HOLD mode, which does not support speed protection.

Because the first panel of the investigative hearing is scheduled to address the effect of autopilot and autothrottle systems on airspeed control, Asiana requests that the NTSB, in advance of the hearing, request that Boeing search its records and provide any letters, comments, complaints, safety recommendations, flight test response items, and other documents from pilots, airlines, the Federal Aviation Administration, the European Aviation Safety Agency, or others with regard to the operation of the Boeing autothrottle during FLCH mode, including records related to autothrottle speed protection when the aircraft is in FLCH mode during an approach. As you may know, this issue has been discussed extensively in the media and among the pilot community, where it is colloquially referred to as the "FLCH trap."

Because it appears that this sequence of events was highly relevant to the circumstances that led to the accident flight, we believe that it is essential for the NTSB to collect all available information concerning the effect of FLCH mode on the autothrottle. Thank you for your consideration.

Sincerely,



Captain Kim Seung-Young
Executive Vice President of Flight Operations
Asiana Airlines

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January 9, 2014

VIA EMAIL AND FEDERAL EXPRESS

David K. Tochen
General Counsel
National Transportation Safety Board
490 L'Enfant Plaza East, SW
Washington, DC 20594-0001

Re: Asiana Airlines

Dear Mr. Tochen:

I am writing to follow up on my phone conversation with Mr. Rodriguez this morning, during which I learned that the NTSB is considering changing the decision made on December 23, 2013, reflected in my email of same date (enclosed), that Asiana would be permitted to make a submission 30 days after the Technical Review, along with other participants in the investigation. I strongly encourage you not to reverse the decision made in December, as it would contradict agency regulations, internal guidance, and past NTSB practice. There is no legal or policy justification for treating Asiana differently from other technical advisers in prior NTSB investigations.

According to 49 CFR § 831.14(a), "Any . . . company . . . whose employees, functions, activities, or products were involved in an accident or incident under investigation may submit to the Board written proposed findings to be drawn from the evidence produced during the course of the investigation, a proposed probable cause, and/or proposed safety recommendations designed to prevent future accidents." As the accident carrier, Asiana plainly fits within this regulation, and therefore may make a submission to the agency. The only limitation on timing with respect to such a submission is that it "must be received before the matter is calendared for consideration at a Board meeting." *Id.* § 831.14(b). Other parties to the investigation are currently scheduled to make their submissions on or about March 17, 2014, and you informed us on December 23 that Asiana would be treated no differently.

Annex 13 to the Convention on International Civil Aviation provides for the NTSB to send a "draft Final Report" to the Korean government with 60 days for comment. *See* Annex 13 § 6.3. The existence of this ICAO comment process -- in which Asiana is not

a formal participant -- should have no bearing on Asiana's ability to make a submission under 49 CFR § 831.14. Appendix F to the NTSB's Aviation Investigation Manual recognizes the clear distinction between the ICAO comment process and the ability of participants in the investigation to make written submissions. It states that "accredited representatives and their advisors" are entitled to "participate in the complete investigative process," including "[m]aking submissions with respect to elements of the investigation," Appx. F ¶ 3, and further explicitly provides that such submissions go beyond Annex 13: "[A]ccredited representatives are provided 60 days to review and comment on draft reports. *Additional participation is also encouraged through the timely use of written submissions.*" *Id.* (emphasis added). As this guidance indicates, commenting upon a draft final report is qualitatively different from making a written submission that can be taken into account during the drafting process.¹

Beyond the clear language and intent of 49 CFR § 831.14 and internal agency guidance, a change in position at this juncture to disallow Asiana from making a submission 30 days after the Technical Review would represent a dramatic and disturbing departure from past NTSB practice:

- In the last investigation of an accident involving a large transport category aircraft in the United States -- American Airlines flight 587 -- Airbus (as technical adviser to the Bureau d'Enquêtes et d'Analyses pour la Sécurité de l'Aviation Civile) made a submission along with other parties to the investigation on or about March 3, 2004.
- In the investigation of Pinnacle Airlines flight 3701, technical adviser Bombardier made a submission along with other parties to the investigation on or about May 1, 2006.
- In the investigation of Empire Airlines flight 8284, technical adviser Aerospatiale Alenia ATR made a submission along with other parties to the investigation on or about April 22, 2010.

We can think of no reason -- and have been presented with none -- that Asiana should be treated differently from other technical advisers in past investigations, or prejudiced with

¹ This difference is compounded by the truncated schedule in this matter. We understand from recent communications that the agency's draft final report is expected to be circulated on or about April 17, 2014, which means that Annex 13 comments will be due on or about June 16, 2014 -- just eight days before the projected June 24, 2014, Board meeting. That the Board will have three months to consider the March 17 submissions and approximately one week to consider Annex 13 comments underscores the different nature of the two processes.

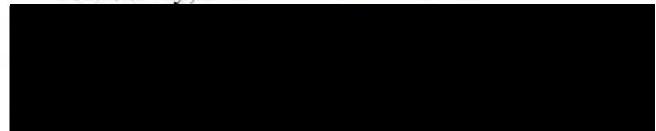
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David K. Tochen
January 9, 2014
Page 3

respect to the timing of its submission in the way the agency now appears to be contemplating.

Given that you informed us in December that Asiana would be permitted to make a submission 30 days after the Technical Review, a change in position at this stage would be deeply troubling. We look forward to your reply, and to your answers with respect to the other requests we have made on behalf of Asiana.

Sincerely,

A large black rectangular redaction box covering the signature of Daniel Suleiman.

Daniel Suleiman

Enclosure

cc: James F. Rodriguez
Benjamin T. Allen
Daniel L. Spiegel
Brian D. Smith

[Attachments omitted.]



National Transportation Safety Board

Washington, D.C. 20594

Office of General Counsel

January 13, 2014

VIA EMAIL

Daniel Suleiman, Esq.
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Jeong-kwen Park
Accredited Representative
Aviation and Railway Accident Investigation Board
Government Complex Building 5-603
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Republic of Korea, 339-012

Re: Investigative requests on behalf of Asiana Airlines, Inc. (Asiana Airlines)
National Transportation Safety Board (NTSB) Investigation No. DCA13MA120

Dear Messrs. Suleiman and Park:

I write in response to Asiana Airlines' requests to the NTSB related to the NTSB's investigation of the Asiana Flight 214 accident on July 6, 2013. In letters to the NTSB Investigator-in-Charge (IIC), Mr. Bill English, dated September 9, 2013, and November 7, 2013, Asiana Airlines officials requested the NTSB obtain or develop additional factual information as part of its investigation. On December 23, 2013, Mr. Suleiman and his colleagues met with me and two members of my office to discuss the information previously requested by Asiana Airlines officials and to seek permission for Asiana Airlines to provide a submission to the NTSB 30 days after the NTSB's Technical Review for this investigation. Also, on December 23, 2013, Mr. Suleiman provided an email message memorializing the meeting earlier that day and in a letter dated January 9, 2014, provided further justification for NTSB to permit Asiana Airlines to provide a post-Technical-Review submission. (Copies of the three letters and the email message described above are enclosed). Because Asiana Airlines is serving as an adviser to the Aviation and Railway Accident Investigation Board of the Republic of Korea (KARAIB) under Annex 13 to the Convention on International Civil Aviation (ICAO Annex 13), we have included Mr. Park, the designated accredited representative, as an addressee on this letter.

As we informed Mr. Suleiman during our December 23 discussion, the issues he raised are investigative matters and thus the NTSB's decisions would be driven by the needs of the investigation as determined by the IIC and other NTSB investigative staff. My office agreed to address Asiana Airlines' requests with investigative staff, and we have consulted with the IIC, the Hearing Officer, and relevant Group Chairmen for the Asiana Flight 214 investigation. My office is always open to discussions with counsel, though the NTSB prefers that investigative matters be handled directly between NTSB investigative staff and technically qualified personnel from the parties, accredited representatives, and advisors working on the investigation. We found in discussing Mr. Suleiman's requests, that many of the investigative decisions had been formed with the input of Asiana Airlines employees who were participating in the investigation.

Turning to Asiana Airline's specific requests, I first address its desire to provide a submission to the NTSB following the upcoming Technical Review. We, of course, expect and welcome Asiana Airlines' investigative input in its role as an ICAO Annex 13 technical advisor. Our investigative staff believes they have made that clear throughout the investigation. We do not agree with Mr. Suleiman's contention that Asiana Airlines' status as an ICAO Annex 13 technical advisor has no bearing on this issue. Nor do we agree we have departed from past NTSB practice. The NTSB always seeks to work closely with foreign technical advisors while respecting the framework of ICAO Annex 13. That being said, Asiana Airlines may make a submission to the NTSB 30 days after the Technical Review, so long as it coordinates its submission with the KARAIB. Further direction regarding submissions will be given by the IIC.

Asiana Airlines requested, through Mr. Suleiman, access to the audio recording of the NTSB's interview of Captain Lee Kang Kuk. We consulted the NTSB Operations/Human Performance Group Chairman about Captain Lee's interview, and he informed us that the audio recording no longer exists. In order to respect the privacy of those interviewed by the NTSB, the agency generally does not retain interview recordings. Instead, all of the participants in the interview meet as a group while still on-scene and create field notes, including a summary of each interview. Through this process, the entire team reviews the interview summary line-by-line. Captain Cho Yong Sun of Asiana Airlines was present during the interview of Captain Lee, had the opportunity to ask questions, and participated in creating the interview summary. The interview summaries are in the NTSB public docket as Exhibit 2B to the public hearing (Document # 21). Captain Cho signed the enclosed field notes concurrence page acknowledging that the content of the field notes accurately reflect the information gathered. The NTSB process of summarization and review by the interview participants, contemporaneous with the interviews, has served the NTSB investigative process well and we believe this process is more accurate and efficient than any review that might occur months later.

Asiana Airlines requested that the NTSB "perform an audio analysis of the CVR to determine whether the FLCH button was intentionally engaged at approximately 1,550 feet on the accident flight." The "audio analysis" referred to by Mr. Suleiman is a sound spectrum analysis, a software-based analysis of the waveforms and frequencies on the CVR recording. The Chief Technical Advisor of the NTSB Vehicle Recorder Division advised that a sound spectrum analysis would not be suitable for determining the specific button pushed. The CVR group, including Mr. Jin Ho Kim of Asiana Airlines, met twice to review the CVR recordings, initially on July 8, 2013, and again on October 29, 2013. The CVR transcript is available as Exhibit 12A in the public docket (Document # 107). The CVR group annotated the transcript to indicate non-verbal sounds heard on the tape. For example, the transcript contains "[sound of click]" entries at 11:26:24.6 and 11:26:27.6 and indicates these two noises came from the Cockpit Area Microphone.

Asiana Airlines requested that "the NTSB ask Boeing to search its records for any documents relating to the lack of an auto-throttle 'wake up' function when the Boeing 777 (or planes with similar auto-throttle logic) are in FLCH mode on approach." NTSB investigative staff have received all the information they have requested from Boeing on the auto-throttle system and believe they have all the relevant information necessary for the investigation.

Asiana requested that "the NTSB perform a 'back feed' simulation as part of the investigation." The NTSB refers to this as a "back drive" simulation. The NTSB does not feel a

back drive simulation will provide any significant additional information to the investigation. There are different types of simulators at issue. The simulator on which a back drive simulation could be conducted does not accurately reflect a Boeing 777 cockpit. There are, thus, significant questions about its usefulness to the investigation due to the differences between the simulator and the accident aircraft. The Boeing 777 simulator cannot perform a back drive simulation without reprogramming. A reprogramming effort would require considerable technical oversight and cost. In addition, it is unlikely the results would provide information of significantly better quality than the non-back-drive simulations conducted to date and the computer animation that is still being completed. With so little expectation of benefit, we have determined the effort, cost and delay to conduct a back drive simulation are not worthwhile. This is an agenda item at the investigative meeting in Seattle scheduled for January 21-23, to which Asiana investigative personnel have been invited.

Asiana requested that "the NTSB obtain a copy of FAA Response Item 12 (as discussed in Captain Eugene Arnold's interview with NTSB investigative staff)." This has been requested and the NTSB expects to obtain a copy.

Finally, Asiana requested that "the NTSB ask Dr. Nadine Sarter to provide an analysis of how human/machine interaction in a highly automated cockpit applies to this accident." While the NTSB occasionally employs consultants when it feels specific, required expertise is not otherwise available to the investigation, we have determined that is not the case here. The NTSB declines the invitation to seek such an analysis from Dr. Sarter.

As I stated above, the NTSB values the continued contributions of Asiana Airlines to the investigation. Please encourage the Asiana Airlines technical staff to actively participate in the remaining investigative activities in their roles as advisors to the KARAIB.

Sincerely,



David K. Tochen
General Counsel

Enclosures

cc: William English
Timothy J. Lebaron
James F. Rodriguez
Benjamin T. Allen
Daniel L. Spiegel
Brian D. Smith

[Attachments omitted.]

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February 6, 2014

VIA EMAIL AND FEDERAL EXPRESS

David K. Tochen
General Counsel
National Transportation Safety Board
490 L'Enfant Plaza East, SW
Washington, DC 20594-0001

Re: Asiana Airlines

Dear Mr. Tochen:

I am writing in reference to Asiana Airlines' request for access to the audio recording of Captain Lee Kang Kuk's interview by the National Transportation Safety Board ("NTSB"), which occurred over two days in the immediate aftermath of the accident involving flight 214.

In your letter of January 13, 2014, you explained that the recording "no longer exists," and that the NTSB "generally does not retain interview recordings" in order to respect the privacy of interviewees.

We cannot understand what investigative purpose the NTSB could be serving by destroying the only original source of information concerning Captain Lee's interview. It is rudimentary in any government investigation that direct evidence be preserved until at least the conclusion of the investigation, and we understand that to be the NTSB's normal practice with respect to evidence generally. In this accident, unlike so many others, the pilot flying the plane thankfully survived, and it is incomprehensible to Asiana that his original words would not be preserved.

We are not persuaded that Captain Lee's privacy interest could justify the destruction of the audio recording of his interview. Captain Lee was not consulted regarding the recording's destruction, and there can be no doubt that public release of the summary of his interview is substantially more invasive of his privacy than mere internal preservation of the recording by the NTSB.

Since the summary of Captain Lee's interview was released to the public, his words have taken on substantial significance in the media, as they had previously among the

David K. Tochen

February 6, 2014

Page 2

investigative staff. Yet, as you know, there was no translator present for Captain Lee's interview; the multi-day interview addressing many nuanced subjects was conducted in English, a language in which Captain Lee is proficient, but clearly not fluent, rather than in his native Korean. Moreover, Captain Lee was suffering from a fractured rib and sprains of the cervical and lumbar spines, injuries for which he did not receive any medical treatment until his return to South Korea, where he was hospitalized from July 14-22, 2013.

Asiana is not suggesting that Captain Lee should not have been interviewed. On the contrary, the interviews of the crew pilots were clearly an important aspect of the investigation. However, the only way for Asiana or the NTSB Board Members to determine whether the English summary of Captain Lee's interview accurately reflects what Captain Lee was asked, as well as the tone, content, and meaning of what he said, would be to review the audio recording of his interview.

As you point out, Captain Cho Yong Sun was present for Captain Lee's interview and thereafter reviewed the summary field notes. But Captain Cho, an Airbus 320 pilot, is not fluent in English, is not a professional translator, and is certainly not a professional investigator -- in short, he was in no position to evaluate whether the interview summary should serve as the sole record of the interview. The acknowledgment page that Captain Cho signed asked whether the "content of the Field Notes . . . accurately reflects the information gathered during the field phase of the investigation." But regardless of whether the summary notes are accurate, they are obviously no substitute for the original recording.

We understand from Captain Cho that, following the interview, he was asked by NTSB investigative staff to destroy his copy of the recording, and he did so; but he cannot recall being told that the NTSB would not retain the original.

In light of the foregoing, we urge you immediately to conduct a thorough and complete investigation to determine whether any copy of the interview recording exists or can be recovered by the NTSB. We look forward to your reply, and request that this letter, as well as my letter to you of January 9, 2014, and your response of January 13, 2014, be added to the public docket in this investigation.

Sincerely,



Daniel Suleiman

cc: The Honorable Deborah A.P. Hersman
Chairman, National Transportation Safety Board



National Transportation Safety Board

Washington, D.C. 20594

Office of General Counsel

February 26, 2014

VIA EMAIL

Daniel Suleiman, Esq.
Covington & Burling LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401

Re: Letter re Interview of Captain Lee Kang Kuk
National Transportation Safety Board (NTSB) Investigation No. DCA13MA120

Dear Mr. Suleiman:

I am writing in reply to your February 6, 2014, letter concerning NTSB recordings of the interview of Captain Lee Kang Kuk following the Asiana Flight 214 accident. As I explained in my letter of January 13, 2014, the NTSB has not retained a copy of the audio recording of the interview. After receiving your letter, we searched agency network locations and laptops we reasonably believed might contain a copy of the recording. That search confirmed the NTSB does not have a copy of the audio recording.

The normal practice of NTSB Operational Factors personnel is to conduct each necessary interview shortly after an accident and shortly thereafter prepare a summary of the interview. Party representatives attending the interview participate in the summarization process. They meet on-scene and review the interview summary line-by-line and pay special attention to any areas of doubt about what was said, including reviewing the audio multiple times if necessary for confirmation.

Your letter questions the investigative purpose for the NTSB's practice. The investigative purpose in creating summaries and not retaining audio recordings is to ensure continued access to pilot statements following aviation accidents. NTSB investigators have extensive experience in dealing with flight crews and have reasonably concluded that the likelihood of interview audio recordings appearing in public media or video-sharing websites would chill the cooperation the NTSB has long enjoyed from surviving accident flight crewmembers. The long-term availability of information from flight crew interviews is of primary concern. Any limitations on the NTSB's ability to obtain necessary information from crewmembers would have a detrimental effect on our accident investigations and aviation safety.

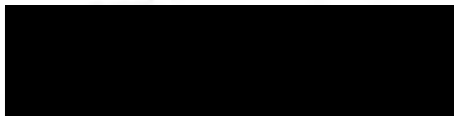
You indicate that "public release of the summary of [Captain Lee's] interview is substantially more invasive of his privacy than mere internal preservation of the recording by the NTSB." We certainly agree with this statement; however, we believe the pertinent comparison is between the public release of textual interview summaries and the public release of interview audio recordings. Courts clearly recognize that voice recordings may raise a substantial privacy

interest that is not present with regard to written transcripts. *See New York Times, Co. v. NASA*, 920 F.2d 1002, 1009–10 (D.C. Cir. 1990). What the courts have not done is draw a bright line that all such recordings constitute a clearly unwarranted invasion of personal privacy that would in all cases outweigh the public interest in the information. *See id.* at 1009.

Please be advised that the events surrounding the interview of Captain Lee Kang Kuk differ from the circumstances you describe in your letter. The NTSB did not deprive Captain Lee of the opportunity to have a translator present. In fact, our investigators pointed out that a translator could be made available. Captain Lee chose to proceed in English. As you know, Captain Cho Yong Sun of Asiana Airlines participated in both the interview of Captain Lee and in drafting the interview summary. Thus, Captain Cho was in a position to confirm that the summary, after careful review by the entire group, accurately reflected what was said during the interview. We understand Captain Cho has relayed to Asiana Airlines management that the interview summary of Captain Lee is in fact accurate.

Finally, NTSB regulations only require relevant factual information, proposed findings, petitions for reconsideration and Board rulings be placed in the public docket. 49 C.F.R. § 845.50. Beyond these items, the NTSB may exercise discretion in determining what information is important for the public to fully understand an accident investigation. NTSB internal guidance concerning public dockets advises that letters containing comments on administrative matters are not required to be placed in the docket. We have reviewed your request to add correspondence to the public docket for this accident with NTSB staff and the investigator in charge (IIC) and decline the request. As I previously advised in my letter dated January 13, 2014, Asiana Airlines may make a submission in accordance with the guidance provided by the IIC.

Sincerely,



David K. Tochen
General Counsel